

GUIDELINES FOR USE BY NEBRASKA COURTS IN DETERMINING WHEN  
AND UNDER WHAT CONDITIONS A HEARING BEFORE SUCH COURT  
MAY BE CLOSED IN WHOLE OR IN PART TO THE PUBLIC

The purpose of these guidelines is to aid judges of the courts of Nebraska in determining whether a proceeding may be closed from the general public, in whole or in part.

In formulating such guidelines it must be kept in mind that as a general principle it is the view of the judiciary of the State of Nebraska that proceedings should be open to the public at all times and only closed, in whole or in part, where evidence presented to the court establishes that by permitting all or part of the proceeding to remain open to the public, a party's right to a fair trial will be substantially and adversely affected and there are no other reasonable alternatives available to protect against such substantial and adverse effect.

We therefore establish the following guidelines to aid judges of the courts of the State of Nebraska in determining whether a judicial proceeding of any type should be closed, in whole or in part.

1. Except as otherwise specifically provided by law or by these guidelines, the general public should not be excluded from a legal proceeding of any type or nature, including a pretrial criminal hearing, suppression hearing, or trial on the merits.

2. Except as otherwise provided herein, upon motion of the defendant or one standing in the position of a defendant, even if known by another name and hereinafter called defendant, the court may consider excluding the general public from all or a portion of a proceeding at which:

(a) the voluntariness of a confession may be seriously disputed and the admissibility of the confession will be a material issue either at the preliminary proceeding then before the court, or at a subsequent hearing, including the trial on the merits, and the court finds based upon evidence adduced that permitting the general public to be present during such proceeding is likely to result in substantially injuring or damaging the accused's right to a fair proceeding and that no other reasonable alternative exists to assure the defendant of a fair trial, or

(b) the defendant is seeking to suppress evidence allegedly obtained illegally and the court finds based upon evidence adduced that permitting the general public to be present during such proceeding is likely to result in substantially injuring or damaging the accused's right to a fair proceeding and that no other reasonable alternative exists to assure the defendant of a fair trial.

(c) If the court believes that by permitting the general public to be present at either of the hearings noted in subparagraph (a) or (b) above, the defendant may be denied a fair trial, and the defendant has not moved for closure, the court shall inquire of the defendant, on the record, whether the defendant desires to hold all or a part of such proceeding with the public present. If the defendant elects to hold such hearing with the public present, the court shall so proceed after noting the defendant's election on the record. If the defendant, however, elects to close all or a portion of such proceeding and so advises the court, it shall be as if the defendant has so moved and all of the provisions of these guidelines shall apply.

3. Before determining to close such proceedings, in whole or in part, the court shall give reasonable notice to all parties to the proceedings and such other persons who have advised the clerk of the court in writing, in advance of a specific trial, of their desire to be notified if such a motion is presented and is to be considered by the court. In giving such notice, the court will advise all such persons of the time and place when hearing on the motion shall be heard and shall afford all interested persons, including the general public, a reasonable opportunity to be present and prepare for such hearing.

4. If the trial court determines after hearing that permitting the general public to hear such matters under consideration will result in a substantial likelihood of injury or damage to the accused's right to a fair trial and no other reasonable alternative for assuring a fair trial exists, the trial court may exclude the general public from such proceeding. To the extent that the trial court can isolate the testimony concerning such matter from other matters presented to the court at the same time, the general public should be excluded only from that portion of the hearings in which such matter is being considered or evidence taken.

Upon entering an order of closure, the court shall articulate written findings as follows:

(a) that the evidence establishes an adequate basis to support a finding that there is a substantial likelihood that irreparable damage to the accused's right to a fair trial will result from conducting the questioned proceedings in public,

(b) that a substantial likelihood exists that reasonable alternatives to closure will not adequately protect the accused's right to a fair trial, and

(c) there is a substantial likelihood that closure will be effective in protecting against the perceived harm.

The burden of establishing such facts shall be upon the moving party.

Except as otherwise provided by law, all matters heard by the court after the general public has been excluded shall nevertheless be on the record and shall be made available for public inspection within a reasonable time after a final judgment or verdict in the case has been rendered.

5. The court may receive preliminary evidence concerning the matters noted in paragraph 4 above in camera, in the presence of counsel for the parties and such other members of the public who have requested the right to be present.

Persons desiring to be present not represented by counsel shall be considered as appearing Pro Se and shall be bound by the orders of the court in regard to such hearing.

A record shall be made of the hearing in camera. The trial court may order such proceedings sealed until after a final judgment or verdict in the trial court has been rendered. The fact that the case in chief is pending on appeal before the Supreme Court of Nebraska shall not prevent the previously sealed tape from being made available to the public upon request. The sealed record, however, shall be made available for purposes of review by the Supreme Court or other court of competent jurisdiction pertaining to the decision to close the proceedings, in whole or in part.

6. Nothing in these guidelines shall be construed, however, to limit the powers of the courts to maintain decorum by ordering unruly spectators removed from the courtroom, or by reasonably limiting the number of spectators, or by exercising similar powers of judges at common law, nor shall anything in these guidelines require a judge to exclude the general public from any such proceedings if, after considering such matter, the trial court concludes that permitting the general public to be present will not create a substantial likelihood of injury or damage to the accused's right to a fair hearing. The fact that an accused or other witness may be embarrassed or be subject to public ridicule by reason of the public being present shall not be grounds upon which to close such matters, it being the intention of these guidelines to prescribe extremely limited situations under which courts shall be closed to the general public and otherwise establish a general policy of permitting courts to be open to the general public, consistent with the accused's constitutional rights to a fair hearing.